Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Petition of Coalition of Competitive	)	CC Docket No. 01-77
Fiber Providers for Declaratory Ruling	)	
of Sections 251(b)(4) and 224(f)(1)	)	

REPLY COMMENTS OF SBC COMMUNICATIONS INC.

SBC Communications Inc. (SBC) hereby submits its Reply Comments on the above-referenced Petition for Declaratory Ruling filed by the Coalition of Competitive Fiber Providers (Coalition).[1] Once again, SBC urges the Commission to reject the Coalition's Petition, which proposes an unlawful solution to a problem that does not exist.

Predictably, a number of commenters regurgitate their litany of collocation demands from the pending *Advanced Services Collocation Order* remand proceeding. These comments prove SBC's point that the Petition is merely a vehicle for circumventing the strict limitations on collocation imposed by Section 251(c)(6) of the Communications Act. Moreover, a number of commenters share SBC's concern that the Petition is an attempt to gain virtually unlimited access to utility property in ways that far exceed the right of access provided by Sections 251(b)(4) and 224. It is clear from the comments that the Petition is completely superfluous, except as a means of avoiding the well-defined statutory restrictions on the occupation of central offices and other utility property. Competitive fiber providers already have nondiscriminatory access to central offices and are able to serve collocated competitive local exchange carriers (CLECs).

[1] Petition for Declaratory Ruling filed by the Coalition of Competitive Fiber Providers on March 15, 2001 (Petition).

I. The Petition is Plainly Inconsistent With Sections 251(c)(6) and 224 of the Act

SBC's initial comments demonstrated that the Petition is a transparent attempt to circumvent the well-defined restrictions on collocation established by Congress in Section 251(c)(6) and reaffirmed by the D.C. Circuit Court of Appeals in *GTE Service Corp. v. FCC*.[2] The fact that a number of commenters use this proceeding as a forum to simply reiterate their collocation arguments from the pending *Advanced Service Collocation Order* remand proceeding proves SBC's point.[3] If anything, these comments are an implicit acknowledgement that demands for cross-connects, placement of distribution frames and general access to central offices are all precluded by Section 251(c)(6). However, commenters supporting the Petition cannot escape the fact that Section 224 does not provide an independent basis for giving competitive providers broad rights of access to central offices. Congress adopted strict limitations on a CLEC's right to collocate its equipment in a central office in Section 251(c)(6), and it would be an unlawful and unauthorized taking of ILEC property to nullify those limitations through some "independent" exercise of Section 224 authority.

Moreover, nothing in Section 224 authorizes the broad right of access to utility property requested in the Petition.[4] As SBC discussed in its comments, the Commission has expressly

---

[2] 205 F.3d 416 (D.C. Cir. 2000).

[3] AT&T Comments at 7-8; WorldCom Comments at 2-5.

[4] Florida Power argues that the Commission has the authority to impose a broader right of access to ILEC property under Section 251(b)(4) than other utility property under Section 224. There is no basis in the statute for such a distinction and the Commission has recognized that Section 224 "imposes upon all utilities, including LECs," the duty to provide nondiscriminatory access to poles, ducts, conduits and rights-of-way. *In the Matter of Telecommunications Act of 1996: Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499, 16058 (1996).

held that Section 224 does *not* provide a general right of access to utility property, and more than 20 years of Commission precedent contradicts the notion that Section 224 applies within central offices. In fact, a number of commenters demonstrate that the fair and ordinary meaning of the terms "duct, conduit or right-of-way" as used in Section 224 cannot be read to apply to racks and wiring within central offices.[5] Perhaps the most tortured statutory interpretation of all in the Petition is the claim that Section 224 includes a right to install dark fiber in central offices, even though both the Commission and an appellate court have recognized that dark fiber is not a telecommunications service. Thus, the broad right of access to central offices requested in the Petition is not even supportable under Section 224.

II. The Petition Would Give Competitive Providers Virtually Unlimited Access to Utility Property

As SBC indicated in its initial comments, the Coalition's interpretation of Section 224 is not, and indeed could not be, limited to incumbent local exchange carrier (ILEC) central offices. A number of commenters share SBC's concern about the broad implications of the Petition. Qwest points out that the Petition would create a right of access to CLEC property, which would be broader than the right to occupy ILEC central offices found in Section 251(c)(6).[6] Further, at least one commenter acknowledges that the Petition applies to "all ILEC or utility structures,"[7] and various electric utilities filed comments opposing the Petition.[8] AT&T, for its part, fully supports the Coalition's interpretation of Section 224 as the basis for obtaining a broad right of

---

[5] Verizon Comments at 7-12; BellSouth Comments at 10-13; Florida Power & Light Company (Florida Power) Comments at 15-18.

[6] Qwest Comments at 6.

[7] OnFiber Comments at 2.

[8] *See generally* Florida Power Comments; Utility Infrastructure Owners Comments.

access to ILEC central offices, but it conveniently ignores the fact that all utilities (including cable operators) are subject to Section 224.[9] Therefore, as the nation's largest cable operator, AT&T is subject to the access demands of competitive fiber providers to the same extent as ILECs.

III. The Petition Proposes an Unlawful Solution to a Problem That Does Not Exist

SBC demonstrated in its comments that the Petition is completely unnecessary and does not propose any new collocation requirements that are consistent with Section 251(c)(6). The comments bear this out. The "problems" that competitors identify in their comments are the direct result of having to comply with the collocation limitations imposed by Section 251(c)(6). Thus, the Commission would have to completely ignore the provisions of Section 251(c)(6) in order to grant the Petition.

For example, several commenters complain that they must be allowed to establish cross-connects in central offices or they will have to establish less efficient connections somewhere outside the central office.[10] This precise issue was addressed by the D.C. Circuit *in GTE Services Corp. v. FCC*, which held that Section 251(c)(6) is "focused solely on connecting new competitors to LECs' networks," and not on allowing one collocating competitor to interconnect with another collocating carrier.[11] The Commission cannot use Section 224 as a mechanism to circumvent the restrictions on collocation established by Congress in Section 251(c)(6) and

---

[9] AT&T Comments at 7.

[10] OnFiber Comments at 7-8; AT&T Comments at 7-8; WorldCom Comments at 3-4.

[11] 205 F.3d at 423.

upheld by the court. Nor can the Commenters rely on the commenters' efficiency arguments as the basis for ignoring unambiguous statutory language.

In any event, there is no evidence that collocated CLECs are experiencing problems obtaining competitive transport. Once a CLEC requests competitive transport, a competitive transport provider can establish a direct connection with that CLEC in the CLEC's dedicated central office space. Alternatively, as OnFiber acknowledges, competitive fiber providers have the option of placing their distribution frames and interconnecting with CLECs in "collocation hotels" or any other third-party property.[12] There is nothing unique about a central office that would justify giving competitive fiber providers the right to set up shop in the central office in order to bypass the ILEC's network with their own distribution frame or as a convenient storage place for their equipment.

Commenters also have presented no evidence that there is a problem gaining nondiscriminatory access to "manhole zero." SBC's current process allows competitive fiber to be directly connected to a CLEC at its dedicated collocation space. This is accomplished by SBC pulling the competitive fiber from manhole zero through the cable vault to the CLEC's collocation space. SBC's process facilitates CLEC utilization of competitive fiber, and at the same time, maintains the security and integrity of both the manhole and the central office itself.

For the foregoing reasons, the Commission should reject the Coalition's Petition.

[12] OnFiber Comments at 10.

Respectfully Submitted,

Jeffry A. Brueggeman
Roger K. Toppins
Paul K. Mancini

SBC Communications Inc.
1401 I Street NW 11th Floor
Washington, D.C. 20005
Phone: 202-326-8911

Its Attorneys

May 9, 2001

CERTIFICATE OF SERVICE

I, Lacretia Hill, do hereby certify that on this 8th day of May 2001, a copy of the foregoing "Reply" was served by U.S. first class mail, postage paid, to the parties listed on the attached sheets.

Lacretia Hill

Robert P. Williams II
Charles A. Zdebski
Todd M. Stein
Attorneys for Virginia Electric and Power Company, AmerenUE, Atlantic City Electric Company and Delmarva Power and Light
Troutman Sanders LLP
401 9th Street NW
Washington, DC 20004

John D. Sharer
Managing Counsel
Electric Delivery and Communications
Law Department-OJRP-14
Dominion Resources Services, Inc.
PO Box 26666
Richmond, VA 23261-6666

Mark C. Rosenblum
Stephen C. Grarvito
Teresa Marreo
AT&T Corp
295 North Maple Avenue
Basking Ridge, NJ 07920

David L. Lawson
Paul J. Zidlicky
Attorneys for AT&T Corp
Sidley & Austin
1722 Eye Street NW
Washington, DC 20006

Jeffery Brumenfeld
Kristin L. Smith
Blumenfeld & Cohn-Technology Law Group
1625 Massachusetts Avenue, Suite 300
Washington, DC 20036

Glenn Stover
Vice President Regulatory Affairs
OnFiber Communications, Inc
10201 Bubb Road
Cupertino, California 95014

Michael E. Glover
Edward Shaking
Verizon Telephone Companies
1320 North Court House Road
8th Floor
Arlington, VA 22201

Jeffery S. Linder
Attorney for Verizon
Wiley Rein & Fielding
1776 K Street NW
Washington, DC 20006

Jean G. Howard
Florida Power & Light Company
9250 West Flagler Street
Miami, Florida 33174

Jonathan D. Lee
Vice President, Regulatory Affairs
The Competitive Telecommunications Association
1900 M Street NW, Suite 800
Washington, DC 20036

Charles C. Hunter
Catherine M. Hannan
Attorneys for Association of Communications Enterprises
Hunter Communications Law Group
1424 Sixteenth Street NW, Suite 105
Washington, DC 20036

Alan Buzacott
WorldCom
1133 19th Street NW
Washington, DC 20036

Sharon J. Devine
James T. Hannon
Qwest Communications International
1020 19th Street NW
Washington, DC 20036

Richard M. Sbaratta
Angela N. Brown
Stephen L. Earnest
Bell South Corporation
675 West Peachtree Street NE
Atlanta, GA 30375-0001

Lawrence E. Sarjeant
Linda L. Kent
Keith Townsend
John W. Hunter
Julie E. Rones
United States Telecom Association
1401 H Street NW
Suite 600
Washington, DC 20005